1947

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K File No. O. Electricity/47

Legal DEPARTMENT

A BRANCH

Subject:—

Opinions under the Indian Electricity Act, 1910.

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File No. O. Electricity/47

Std. Sectt. Slip 24 B e.

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Submitted.

By their letter dated 25-7-46 the P.W.D. appointed the Electrical Engineer to Govt. as an arbitrator under S. 52 of the Indian Electricity Act, 1910, to decide the dispute between the Parle-Andheri Municipality and Messrs. the Bombay Suburban Electric Supply Co. Ltd. as regards therates to be charged by the latter for energy supplied for public lamps. The Electircity Co. in its letter dated 24-9-46 (p. 49) states that the reference to arbitration is not competent under clause 12 of the Schedule to the Indian Electricity Act, 1910, as the rates which the Municipality disputes are inclusive of maintenance, interest and depreciation charges, and not the rates merely for energy supplied. The Electrical Engineer therefore enquires whether it would be competent for him to proceed with the arbitration (Vide his letter at p. 51 ante). The E.E. further states that the Parley-Andheri Municipality had before the termination of the last agreement sought a renewal thereof on the then existing terms. He thinks therefore that the Municipality can be deemed to have accepted the rates existing in the said agreement and cannot raise the question again. The R.L.A. is requested to advise in the matter.

2. Clause XII of the Schedule to the Indian Electricity Act, 1910 (IX of 1910) provides that the price to be charged by the licensee and to be paid to him for energy supplied to him for the public lamps, and the mode in which these charges are to be ascertained shall be settled by agreement between the licensee and the local authority, and where any difference or dispute arises, the matter shall be determine by arbitration. The provisions contained in the Schedule shall be deemed to be incorporated with and to form part of every license granted under Pt. II of the Act, save in so for as they are

are expressly added to, varied or excepted by the license (see S.3(2)(f) of the Act). It is presumed clause XII applies in the case of the Bombay Suburban Electric Supply Co. without variation. It would be seen from clause XII that it provides for two things : (i) the price to be charged by the license e and to be ~~xxxxxxxxxx~~ paid to him for energy supplied for public lamps, and (ii) the mode in which those charges are to be ascertained. Thus under (ii) it may be open to take into consideration maintenance depreciation charges etc. before ~~xascertainxdg~~ the rates. Consequently the contention of the Electricity Co. that the present reference to arbitration is not competent under clause XII does not appear to be correct and it would not be illegal on the part of the arbitrator to proceed with the arbitration.

3. The Electrical Engineer who has been appointed arbitrator in this case thinks that in seeking the renewal of the existing agreement the Municipality has committed itself to the rates already existing, as such renewal could be sought only on condition that the existing rates are accepted. The E.E. therefore thinks that the Municipality cannot now rake up the question of rates in which case the question of arbitration would not survive. ~~xx~~ Before expressing a definite opinion on this point it is necessary to peruse the terms of the agreement between the Parle-Andheri Municipality and the Bombay Suburban Electric Supply Co. referred to in the E.E.'s letter. The P.W.D. may be requested to forward a copy of the said agreement.

4. This reference has been made by the Asstt. Secy. P.W.D., the attention of that Deptt. may be invited to para 104 of the Sectt. Instructions.

Sd/- D.W.Deshmukh.
2-12-46

A.S.

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It is true as observed by the Electrical Engineer to Government in his letter at page 51 ante that the Parle-Andheri Municipal Borough gave one year's notice for renewing the agreement, but it appears from the letter of the Vice-President of the Municipality at page 5 ante that in the renewal notice it was stated that the rate charged should be 3 as. per unit including all charges for energy attendance, renewals, interest, depreciation and all other fixed charges on the installation required for street lighting. Since the Bombay Suburban Electric Supply Ltd. refused to vary the charges as desired by the Municipality, the latter cannot be deemed to have "ipso-factor accepted the existing rates included in the agreement." The m view taken in this respect by the Electrical Engineer to Government in his letter at page 51 ante does appear to be correct.

Clause XII of the Schedule to the Indian Electricity Act, 1910 provides -----

> "The price to be charged by the licensee and to be paid to him for energy supplied for the public lamps and the mode in which those charges are to be ascertained, shall be settled by agreement between the licensee and the Provincial Government or the local authority, as the case may be, and, where any difference or dispute arises, the matter shall be determined by arbitration".

In determining the rates, maintenance charges, interest on capital expenditure, depreciation etc. can be taken into account . There does not therefore appear to be any substance in the contention of the Bombay Suburban Electric Supply Ltd. Consequently it

it would-----

it would be competent for the Electrical Engineer to Government to proceed with the arbitration.

Id/-D.V.V.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 514, dated the 16th January 1947

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Office of the R.L.A.

It appears that Government has agreed to take a supply of 13,000 to 15,000 lbs. of milk every day from Messrs. Polson Ltd. Raw milk is purchased by the company at Anand on behalf of Government, processed at their dairy at Anand and then despatched to Bombay. Several of the machines employed in the processing of milk are electrically operated. Electricity is supplied to the dairy by the Anand Electric Supply Co. Ltd. under an agreement between the two companies. It was noticed that during the period from January to August 1946 on several occasions there was faulty power supply with the result that some milk could not be processed. One of the conditions of the agreement between Government and the Polson Company is that the Company is not to bear any loss on the purchase of milk. Consequently wherever there are interruptions in the supply of electrical energy and the processing of milk is not done in time, the loss has to be borne by Government. The questions raised for the consideration of the R.L.A. are:-

(a) What action can be taken to recoup the financial loss to Government caused by the unsatisfactory operation of the Anand Electric Supply Company which operates under a license from Government and which according to the report of investigation by the Electrical Department has failed to make sufficient arrangement for rendering satisfactory service;

(b) Whether the Electric Supply Company can be forced to enter into an agreement with the Polson Company providing for a penalty clause in cases where the supply of energy has failed and thereby the processing of milk is not done and Government has suffered loss.

It appears that no action can be taken by Government to recoup the loss the due to the failure of the supply of energy by the Electric Supply Company, firstly because under the agreement with the Polson Company such loss is to be borne by Government and secondly because there is no agreement between the Government and the Electric Supply Company for the supply of energy for the processing of milk. Nor would it be possible to force the Electric Supply Company to enter into an agreement with the Polson Company requiring it to bear the loss which Government suffers in such cases.

Under clause 10(iii) of the agreement the licensee shall not be responsible for any interruptions or diminution in the supply of energy due to occurences beyond his control. In the present case the interruptions in the supply of energy, being due to the negligence of the company, cannot be considered as being due to occurrences beyond the control of the licensee and consequently the Polson Company could have been entitled to claim damages from the Electric Supply Company(see Meares pp.300-301). But unfortunately under the agreement between the Polson Company and Government the loss is to be borne by the latter. There being therefore no loss to the Polson Company no damages could be claimed by it from the Electric Supply Company under clause 10(iii) of the agreement. In the circumstance the proper course appears to be to amend the agreement between Government and the Polson Company providing that in case any loss occurs by the failure of the supply of electric energy, the Polson Company should make a claim for the same against the Electric Supply Company and the amount recovered should be made over to Government for the recoupment of the loss.

Id/- D.V.V.

Remembrancer of Legal Affairs,.

U.R. to Milk Commissioner, No. 1281 dated the 7th February 1947.

PSM. 16/5
4C

No.MC/DEV-782/D

Office of the Milk Commissioner,
Wellington Cinema Bldg., Dhobi Talao,
B O M B A Y: 2nd April 1947.

From

The Milk Commissioner, Bombay.

To

Messrs. Polson Ltd.,
Post Box No. 367,
B O M B A Y.

Subject:- Loss due to break down in electric current at Anand.

Gentlemen,

You are aware that the Government was examining the question referred to above. It is now observed that under clause 10 (III) of the agreement entered by you with the Anand Electric Supply Company Limited, the licensee shall not be responsible for any interruptions or diminations in the supply of energy due to occurrences beyond their control. In the present case, however, the interruptions in the supply of energy being due to the negligences of the Company, cannot be considered as being due to occurrances beyond the control of the licensee and consequently, you would have been entitled to claim damages from the Electric Supply Company. But according to the existing arrangements between you and the Government the loss is to be borne by the latter and as such there being no loss to your firm the loss so far incurred cannot be ~~xxxx~~ recovered from the Electric Company due to the above technical objection.

It is therefore proposed to amend the existing agreement between you and the Government providing that in case any loss occurs by the failure of the supply of electric energy, your firm should make a claim for the same against the Electric Supply Company which supplies you with current and the amount recovered should be made over to Government in full for the recoupment of the loss.

The above mentioned condition is to be included in the new agreement which is to come into force from 1st January 1947, and your early acceptance, therefore, for the same will be highly appreciated.

Your obedient servant,

Sd/- ~~Illegible.~~

Milk Commissioner, Bombay.

Copy to:-

The Remembrancer of Legal Affairs, Bombay.

The Director of Civil Supplies (Accounts), Bombay.

PAM.16/5
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9-11.

Sls.JDK/FEM:MC-187/47

14th April 1947.

The Milk Commissioner,
Government of Bombay,
Wellington Cinema Building,
Dhobi Talao,
Bombay.

Dear Sir,

MILK SUPPLY FOR BOMBAY.

LOSS DUE TO BREAK-DOWN IN ELECTRIC CURRENT AT ANAND.

Ref:- Your letter No. MC/DEV-782/D dated 2nd April 1947.

We are in receipt of your above referred letter and note that you say regarding making Anand Electric Supply Co., Ltd., responsible for failure of electric power to the Dairy and other places where we may be handling milk for Bombay Government.

If you could see your way to induce the Anand Electric Supply Co., Ltd., to agree to such an agreement with us there will be certainly no objection to our having similar arrangement as with you in our new agreement as suggested in para. 2 of your letter.

We had occassions more than once to discuss this matter with the Anand Electric Supply Co., Ltd., and they have made it absolutely clear to us that they cannot possibly take over any such responsibility.

While it may be true that on certain occassions the interruptions in the supply of energy may be due to the negligence of the Company, you will agree with us that it will be extremely difficult to prove that t e interruption was due to negligence and not due to causes beyond the Electric Supply Company's control.

Even since the receipt of your letter the undersigned spoke to one of the principal persons in the Anand Electric Co., Ltd., but he point blank refused to take up any responsibility saying that the interruptions whenever they occured were entirely due to causes beyond their control.

Under such circumstances we are confident that you will appreciate that we cannot accept the amendment as suggested by you.

Yours faithfully,

For POLSON LIMITED,

Sd/- Illegible.

DIRECTOR & CONTROLLER.

Copy to (1) The Remembrancer of Legal Affairs, Bombay. *
(2) The Director of Civil Supplies (Accounts) Bombay.

*Reference Milk Commissioner's letter No. MC/DEV-782/D dated 2-4-47 addressed to us, copy to you.

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4C

L.D.

R.I.No.5268, dated
the 30th April 1947.

Submitted.

2. This relates to a petition (at p. 43) from one Mr. Surjansingh B. Suraj requesting that the Secretayy Licensing Board should be directed to cancel the order dated the 7th April, 1942, specifically, as that order has been held illegal by the Asstt. Judge, Dharwar in Civil Appeal No. 64 of 1945.

3. It appears that the petitioner Mr. Suraj held a competency certificate, a supervisor's permit, and a contractor's licence and carried on business as an electrical Contractor at Hubli, under the ~~same~~ name and style of the Singh Electric Works.

In may 1941 it was observed that the Singh Electric Works was implicated in many a mal-practice, in contravention of the Electric Rules 1937, with the result that the case was taken up by the Licensing Board and an order was passed on the 17th April 1942, under rules 26, 35A and 45 of the Electric Rules 1937, cancelling the contractor's licence and suspending for a year the supervisor's permit held by the petitioner, Mr. Suraj.

Thereupon the petitioner, Mr. Suraj filed a Civil Suit No. 36 1943, in the Court of the ~.C. Sub-

Sub-Judge-----

Sub-Judge, Dharwar, for a declaration that the order passed by the Licensing Board was ultra vires and for damages. But the suit was dismissed with costs (vide slip X of the file). Thereupon Mr. Suraj preferred an appeal to the District Judge, Dharwar against the order of dismissal and the appellate court held that the order passed by the Licensing Board was illegal (vide judgment at p. 3 ante).

4. Now the petitioner requests that the Secretary Licensing Board should be directed to cancel the order specifically.

5. The papers have been forwarded by the P.W.D. to R.L.A. for advice whether there is any necessity to cancel the order passed by the Licensing Board specifically, when it is declared illegal by the Court.

6. The Electrical Engineer to Government Bombay whose remarks were called by the P.W.D. is of the opinion that the declaration by the appellate court that the order passed by the Licensing Board is illegal, authmatically renders the order null and void, and that in absence of any direction in the judgment to that effect, it does not seem necessary to specifically cancel the order (vide p. 51 ante) .

7. The P.W.D. considers that the view taken by the Electrical Engineer is correct. R.L.A. however is requested to advise.

8. By section 21 of the General Clauses Act, the power to issue on

Office of the R.L.A.

The view expressed by the Electrical Engineer to Government at page 51 ante is correct.

Id/- P.M.L.
30-5

Remembrancer of Legal Affairs.

U.R. to P.W.D.,No. 5722 dated the 31st May 1947.

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4C

Office of the R.L.A.

The question referred by P.W.D. on 11-4-45 to the R.L.A. was whether the arbitration under section 52 of the Indian Electricity Act, 1910, in the case of the dispute between the Panvel Municipality and the Panvel Taluka Electric Development Co., Ltd; in respect of the rates to be charged by the latter for street lighting should be confinxed to the rate of supply of energy only and not to other incidential charges for lamps, maintenance, etc., and in his opinion No. 3096 dated 20-4-45 the R.L.A. agreed with the view of the P.W.D. that the arbitration should be confined to determining charges for the supply of energy. That opinion, which is in confirmity with the provisions of clause XII in the Schedule, is correct so far as it goes. The question now for consideration is slightly different. At page 1 we find the resolution of the municipalities stating that they desire to renew their respective agreements for street lighting on the following basis:-

(1) The charge per unit, including energy, attendance, renewals, interest, depreciation and all other fixed charges on the Company's installation should be annas three per unit.

The Bombay Suburban Electric Supply, Ltd. Submit that clause 12 of the Schedule cannot apply in the present dispute as the rates which the municipalities are disputing are all-in rates, including not only the rates for energy but also maintenance, interest on capital expenditure, depreciation, etc. Under clause 12, the price to be charged by the licensee and to be paid to him for energy supplied for the public lamps and the mode in which those charges are to be ascertained shall be settled by an agreement

between the licensee and the Provincial Government or the local authority, as the case may be, and where any difference or dispute arises, the matter shall be determined by arbitration. Presumably in the case of public lamps, unlike the lamps used by private consumers, the price is determined not merely on the basis of the energy consumed (the cost of providing the connection and installation etc. being recovered from the consumer independently) but includes in the price the elements which the municipality and the company have in view, viz. maintenance, interest on capital expenditure, depreciation, etc. If that presumption be correct, all these items inevitably enter into the charges; and the mode of ascertaining the charges must necessarily take account of these items. They may otherwise be separate elements, but as they form the component part of the price charged per unit, they are a fit subject matter of arbitration as included in the mode of ascertaining the charges. This aspect of the case was not submitted to the R.L.A. in the note referred to by the P.W.D. on 11-4-45, regarding the dispute between the Panvel Municipality and the Panvel Taluka Electric Development Co., Ltd., There is thus no conflict between R.L.A.'s opinion No. 3096, dated 20-4-45 and his opinion No. 514, dated 16-1-47.

Id/- P.M.L.
3-6-47

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 5828, dated the 4th June 1947.

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Legal Department.

Forwarded with compliments to the Advocate General for necessary action as desired by M/S. Little & Co., Solicitors to Government.

Id/- P.M.L.
6/6

Remembrancer of Legal Affairs.

U.O.R. to the Advocate General No. 6160 dated the 14th June 1947.

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Bombay 28th May 1947.

No. NV/5667 of 1947.

Below U.O.R. No. 5660/36/15483, dated the 16th May 1947.

On a careful reconsideration of the matter, we are of the opinion that it is not necessary to give the company a notice to concur in the appointment of a single Arbitrator as previously advised by us. The provisions of section 52 of the Indian Electricity Act entitle Govt. to appoint an Arbitrator to determine the disputes or differences that have arisen as to the value of the undertaking, without reference to the company, and we would advise Government to do so.

We enclose a draft of the proposed order making such appointment, but we would consider it advisable to get the same settled by the Advocate General, with special reference to the provisions of the said section 52 of the Indian Electricity Act.

As regards the arbitration fees, we do not think that the terms of the appointment of Mr. Mulleneux should form part of his appointment. We suggest that the details of these terms be incorporated in a separate letter addressed to Mr. Mulleneux, and a copy thereof forwarded to the company.

Little and Co.,
Solicitors to Government.

PSM.16/5
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In the matter of section 5(b) and (d) of the Indian Electricity Act, 1910.

and

In the matter of the Arbitration between the Province of Bombay and the Hubli Electricity Company, Limited.

WHEREAS disputes or differences have arisen as to the value of the undertaking of the Hubli Electricity Coy. Ltd. to be paid by the Government of Bombay.

AND X WHEREAS under the provisions of clauses (b) and (d) of section 5 of the Indian Electricity Act the value of such undertaking now has to be determined by arbitration.

AND WHEREAS by reason of the provisions of section 52 of the said Act such value shall be determined by such person or persons as the Government of Bombay may nominate on the application of either party.

NOW therefore in exercise of the power ~~xx~~ conferred by section 52 of the Indian Electricity Act, the Government of Bombay hereby nominates Mr. H.J.Mulleneux as the Arbitrator to determine the value of the undertaking of the Hubli Electricity Coy. Ltd., to be paid by the Government of Bombay pursuant to clauses (b) and (d) of section 5 of the said Act as the purchase price for such undertaking.

By order of the Governor of Bombay,

Secretary to Government.

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4C

No.37 of 1947.

Advocate General's.
Chambers, High Court.
Bombay, 3rd July 1947.

U.O.R. to the Advocate General Bombay,

No. 6160 dated the 14th of June 1947.

Subject:- Valuation of the Hublic Electric Undertaking.

O P I N I O N.

I agree with the opinion of Messrs. Little and Co. that it is not necessary for Government to call upon the other side to concur in the appointment of a sole arbitrator to determine the valuation of the Hublik Electricity Co. Ltd. undertaking. Section 5, sub-section (B) of the Electricity Act provides for any difference between a local authority which agrees to purchase the undertaking and the owners of the undertaking to be determined by arbitration. Sub-xxclause(D) which is the relevant sub-clause in this case states that if a local Government elects to purchase, the licensee has to sell the undertaking upon terms and conditions similar to those in sub-clause (B), one of the terms being the determination of any dispute by arbitration. Section 52 of the Act - provides that where any matter is by or under the Act directed to be determined by arbitration, it is to be determined by such person or persons as the Local Government may nominate on the application by the party. In the absence of any express provision in the license, there is, so far as I know, no express provision in the license for the Hubli Electric Co., and consequently section 52 will apply. The Local Government can accordingly proceed to nominate an arbitrator without reference to or concurrence of the other side.

Sd/- C.K.Daphtary.

ADVOCATE GENERAL.

PSM.16/5
4C

R.I.No. 7941 dated 4-7-1947

Submitted.

The Advocate General has forwarded his opinion on the points raised by Messrs. Little and Co., Solicitors to Government, at pp. 17-18 ante. The Advocate General's opinion along with the case papers may now be forwarded to P.W.D. for further action.

M.G.P.
5-7

Solr. Sd/- R.D.N.
5-7

A.L.H. Sd/-R.T.K.
5-7

R.L.A. Sd/- D.V.Vyas.
11-7

U.O.R. to P.W.D. No 7206, dated the 14th July 1947.

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Submitted.

2. The facts of the case are fully stated in the P.W.D. office note on pages 215-218 ante.

It appears that the Mahad Electric License, 1937 was granted to Messrs. (1) Gangadhar Ramkrishna Oka and (2) Nanasaheb Pandurang Thopate carrying on business in partnership at Mahad, District Kolaba under the name and style of Messrs. Oka Brothers and Thopate Company. Immediately afterwards the license was granted the licensee applied to Government for its consent to assign the license to the Mahad Electric Supply Co., Ltd., Govt. Stipulated certain conditions and they were agreed to except regarding the one in respect of the Manager's or Secretary's salaries i.e. no additional expenses in respect of the Manager's or Secretary's salaries would be borne by the Mahad Electric Supply Co., Ltd., and that this should be made clear in the managing Agency Agreement G.L.L. No. 2035/36 dated 9-7-43 the licensees were asked to make the condition clear in a Managing Agency Agreement and was informed that the question of assignment of the license will be proceeded with on their furnishing the complete revised draft of the said Agreement.

Messrs. Divekar and Co., Solicitor, on behalf of their clients Messrs. Oka Brothers and Thopate Co., s in their letter dated 29th January 1947 write to state that Mr. Thopate one of the partners of the firm of Messrs. Oka Brothers and Thopate Co., has by assignment dated the 25th May 1947 transferred his share, right, title, and interest in the said partnership to Mr. G.R.Oka the other partner who now conducts the firm alone. On thes the P.W.D. has raised the question whether consent of Govt. under section 9(2) of the Indian Electricity Act for the assignment is necessary.

Messrs. Joshi and Co., Solicitor, on behalf of the Mahad Electric Supply Co., Ltd., in their letter dated the 12th February 1947 write to state that the

Company has passed a resolution regarding the Manager's and Secretary's salaries, with a view to conform to Govt. letter dated 9th July 1943 and consider that no alteration in the Managing Agency Agreement in this respect is necessary since clause 6 A in the original agreement was quite proper. The P.W.D. considers (in para 4 in that office note dated 17-6-1947), that apart from the provision in clause 6(a) of the Agreement Government wants that the specific condition should be made clear in the Managing Agency Agreement and it is necessary that the Managing Agents should agree to it". Before the Solicitors are informed the P.W.D. has referred the papers to the R.L.A.

3. The questions for consideration of the R.L.A. are:-

(1) Whether the view taken in para 4 of the P.W.D. office note dated 17-6-1947 is correct; and

(2) Whether in view of the transfer of share, right, and interest in the partnership by Mr. Thopate in favour of Mr. Oka the other partner, consent of Government under section 9(2) of the Indian Electricity Act, 1910 is necessary.

Question (1):- Condition 12 of the Mahad Electric License, 1937 provides that "at any time after the commencement of the license, the licensee may with the previous consent in writing of Government and subject to compliance with such conditions upon which such consent may be given assign this license and transfer and whole of the undertaking in respect of which this license is granted to any individual or company formed or to be formed, etc." This provision makes it sufficiently clear that Government can refuse assignment, unless the conditions prescribed by Government in this behalf are complied with. If Government considers that specific conditions regarding the Manager's and Secretary's pay should be made clear in the Managing Agency Agreement then unless the Mahad Electric Supply Co., Ltd., Government may defer the assignment of the license.

Question (2):- Section 9(2) of the Indian Electricity Act, 1910 provides that the licensee shall not at any time assign his license or transfer his undertaking or any part

Office of the R.L.A.

The condition imposed by Government is that "no additional expenses in respect of the manager's or secretary's salaries will be borne by the Mahad Electric Supply Co. Ltd." It is true that that company has now passed a resolution that no additional expenses in respect of the Manager's or Secretary's Msalaries will be borne by the said Mahad Electric Supply Co. Ltd., beyond what is provided in clause 6(a) of the Agreement dated the 6th December 1941. That clause 6(a) appears to provide that the company shall pay to the said firm a fixed sum of Rs. 750 per year by way of office allowance. It is not known whether the Agreement provides for the salary of the Manager or Secretary in addition to the office allowance of Rs. 750. If it does, any reference to clause 6(a) of the Agreement would be meaningless. The resolution of the Company would be unilateral and would not be binding on the Managing Agent unless the Agency Agreement expressly bars his right to higher remuneration. Consequently, Government may insist on the Managing Agency Agreement being amended to the effect that no additional expenses in respect of the Manager's or Secretary's salaries would be borne by the Mahad Electric Supply Co. Ltd. The view taken by P.W.D. is correct.

No consent of Government would be necessary under section 9(2) of the Indian Electricity Act, 1910 for the transfer or assignment of Mr. Thopate's interest to the other partner (see R.L.A.'s opinion No. 5387, dated the 26th October 1937).

Id/- D.V.V.

Remembrancer of Legal Affairs

U.R. to P.W.D. No. 7808 dated the 29th July 1947.

PSM. 17/5

Submitted.

2. In his letter No. 32, dated the 17th February 1947 the Secretary of the Electric Consumers Association, Kalyan, inter alia complains that the Kalyan Electric Supply Co. has charged excess rates to consumers in respect of new connections over and above the proscribed rates certified by Govt. and when the matter was referred to the Electrical Inspector he told that such complaints should be submitted by the consumers individually. In the P.W.D. office note it is stated as follows:-

"It seems that under the provisions of the I.E. Act the El. Inspector can only act in respect of such disputes on the matter being referred to him either by the licensee or the individual consumer vide e.g. sub-clause (3) of clause VI in the Schedule, section 26(6) of the Act. The proper course for the Association would therefore be to take a power of attorney from the consumer concerned and then refer the matter to the El. Inspr. , on his behalf. The Association may be advised accordingly after u.o.r. to the El. Engineer, to Govt. and the R.L.A."

The D.S. P.W.D. has approved this course and referred the papers to the R.L.A. for advice.

3. The provisions under which references to the Electrical Inspector can be made are spread all over the Act. Pl. see section 21(4), proviso to section 24(2), section 26(6) of the Indian Electricity Act, 1910 and clause VI(3) of the Schedule thereto. Govt. has power to refer under section 33 cases to the Electrical Inspector; but this section pertains only to accidents. There is no general section under which such references can be made. So far as charging excess rate by licensee is concerned, the Act does not specifically provide for a reference to the Electrical Inspector either by the licensee or the consumer. The question about execution of the power of attorney therefore does not survive.

However clause XI of the Schedule appended to the

Act lays-----

Act lays down that save as provided by clause IX, sub-clause (3) (supply by bulk licensees) the prices charged by the licensee for energy supplied by him shall not exceed the maxima fixed by his license or in the case of a method of charge approved by the Provincial Govt., (under section 23(3)(c)) such maxima as the Provincial Govt. shall fix on approving the method etc. The draft license in the Act reiterates these provisions specifying particular changes. (Please see clause 7). Section 47 makes it penal for a licensee to default in complying with any of the conditions of his license. And it appears that for charging in excess of the prescribed rates a licensee can be prosecuted after complying with the provisions of section 50.

Sd/- T.Y.Chandani
8-7

It is alleged that the licensee has been overcharging the consumers in respect of new connections. Section 26(6) and sub-clause (3) of clause VI of the Schedule appear to have no application. The proper course is to prosecute under section 47 read with sections 22 and 23(c) read with cl. XI of the Schedule after investigation. A.A.S. may ~~not~~ consider this case immediately.

Id/- R.T.K.
11-9

A.A.S.

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The papers show that the complaint is about an unauthorized and excessive charge in respect of new connections. As such it would be a difference or dispute as to the cost of a service line as contemplated by sub-clause(3) of clause VI of the Schedule to the Indian Electricity Act, 1910 Such dispute can be referred to the Electric Inspector and decided by him; and an appeal would also be available under the provisions of section 36. Sub-clause (3) of clause VI of the Schedule does not require, as sub-section(6) of section 26 does, that an application of either party is necessary in order to enable the Electric Inspector to decide the dispute; the sub-clause merely says that the matter shall be referred. It follows, therefore, that not only can the owner or occupier who is overcharged make the reference, but even the consumers' Association can do so without a specific power of attorney for that purpose, so long as the owner or occupier has authorized the Association to make the reference.

Id/- P.M.L.
24-10

Remembrance-r of Legal Affairs.

U.R. to P.W.D. No. 10368, dated the 30th October 1947.

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Office of the R.L.A.

Indian Electricity Act, 1910.
Disconnection of service lines.

It appears that the Chopda Electric Supply Co. Ltd., Chopda, gave a notice to Dr. Phatak to the following effect:

> "In spite of our disconnection notice and verbal repeated requests, you have not paid the amount of bills due from you which is pending since very long. You are therefore hereby informed that Company's property i.e., service lines and meter will be removed by Company's men from your premises after 48 hours from the receipt of this notice. The interruption in the work of removing Company's property would be a matter of serious damage which please note".

In para. 4 of his endorsement at page 11 ante, the Electrical Engineer to Government observes:

> "As regards the notice of removal of service lines and meter at page 1 ante, it seems doubtful whether the Company is entitled to remove the service lines, etc. irrespective of the fact that the ownership of the service lines presumably vests in the licensee, in view of the obligations imposed on the licensee by section 24(1) of the Act to reconnect the supply as soon as the charges are paid by the defaulting consumer".

The R.L.A. is requested to advise whether the view taken by the Electrical Engineer to Government is correct.

2. Sub-section (1) of section 24 of the Indian Electricity Act, 1910, inter alia provides that where any person neglects to pay any charge for energy, etc., the licensee may, after giving not less than seven clear day's notice in writing to such person, and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and/for that purpose cut or disconnect any electric Supply and any other works deemed to be the property of the licensee through which energy may be supplied and may discontinue the supply until such charge or other sum together with any expenses incurred by him in cutting off and reconnecting the supply, are paid but no longer. Under section 20(1)(c) a licensee or any person----

any person authorized by a licensee may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which energy is or has been supplied by him, for the purpose of removing, where a supply of energy is no longer required, or where the licensee is authorized to take away and cut off such supply, any electric supply-lines, meters, fittings works or apparatus belonging to the licensees. It will be observed that whereas section 24 authorises the licensee to cut off the supply the removal is permitted under section 20(1)(c) where the licensee is authorized to take away and cut off the supply. As the same expression is as a general rule to be presumed to be used in the same sense through out an Act, a change of language probably suggests the presumption of change of intention. This presumption no doubt would not be of much weight if it could be shown that the variation is accounted for by a mere desire to avoid the repeated use of the same works or other similar circumstances. The addition of the words "to take away and" cannot be explained away on any of these grounds, and the variation cannot be dismissed as of no consequence. The intention of clause ~~(k)~~ (c) of section 20(1) seems to be that removal is permitted only in cases where there is no possibility of reconnecting the supply on the ground that it is no longer required or on the ground that the licensee is competent to take away the supply and not merely cut it off. Section 24 permits only the discontinuance of the supply and not taking it away. The concluding words "but no longer" occuring in that section emphasise that the discontinuance is only temporary and must not last longer than the date

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on which----

on which the payment is made. It would follow, therefore, that the words "to take away and" in clause (c) of the section 20(1) have a definite purpose and are not merely otiose. In that view in a case which falls under section 24(1) it would not be competent to the licensee to remove the supply-lines, meters, fittings etc.

Id/- P.N.L.
26-11

Remembrancer Legal Affairs.

U.R. to P.W.D. No. 11333, dated the 27th November 1947.

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Office of the R.L.A.

"Undue preference" in rates prescribed by Ahmedabad Electricity Co.

Indian Electricity Act, 1910.

R.L.A.'s opinion No. 6054, dated 3/9/1946.

The points raised by the Electrical Engineer in his note at p. 9 ante were examined by the R.L.A. (Mr. Moos) and the found that it was not necessary to review his previous opinion No. 6054, dated the 3rd September 1946. However the Electrical Engineer desires that the present R.L.A. should consider the question.

The leading English Case on the point of "undue preference" is the Metropolitan Electric Supply Co. Ltd., Vs. Ginder, (1901) 2 Ch. 799. At p. 811 of the Reports Bucklay J. observes:-

> "It appears to me that the relevant words here xx are"under ~~xxxxxxxxx~~ similar circumstances to a corresponding supply". There is left a latitude to the Company to make bargains with its customers where circumstances differ, or the supply does not correspond, for different terms. How far may they go is a question of degree. The facts are that Gates is a very large consumer -- his bill is stated to be some ten times that of the defendant. Moreover, he is a consumer who burns largely upon the day load as distinguished from the night load a circumstance which is to these companies of great importance. They are bound to keep their plant running in the day as well as in the night, to some extent at least, because some consumers~~xxx~~ xx want current during the day; and to get a consumer who draws on the day load is of use of them, because they are getting some return for running plant during hours which would otherwise be unproductive. May they

take that------

take that into consideration ? I answer, certainly they may. The "circumstances" are not "similar" where the one consumer is on the day load the other is on the night load.

Then what does a "corresponding supply" mean? Does it mean that you are necessarily to treat the small consumer upon equally advantageous terms with the large consumer ? The cost to the Company may be very different; greater uniformity of demand, easier and less expensive collection of the amount to be paid are circumstances to which regard must be had."

Even the Electrical Engineer has no quarrel with the position stated above. In his note at p. 9 ante, he has stated:-

"I ~~xkx~~ consider that the words "IN similar circumstances" in the section 22 of the Indian Electricity Act should be interpreted as "in similar electrical circumstances affecting the power supply by the licensee", because if two consumers demand equal energy with equal maximum demand at the same time of day, they should be identical to the licensee, who should not differentiate between them. This will also be evident from the concluding portion of the extract from Messrs quoted in para. 3 on page 6, where for determining "the similarity in circumstances" only electrical characteristics of the load have been considered, viz. the amount of energy consumed, expenses of supplying it and getting payment, uniformity of demand, the time when energy is required etc."

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If amount of energy consumed, expenses

If amount of energy consumed , expenses of sup lying it and getting ~~xxxxxx~~ payment, unfformity of demand and time when energy is required can be taken into consideration then factories will certainly be entitled to a preferential treatment. The amount of energy consumed by the factories would be enormous; the expenses of supplying it would be comparatively less; the recovery of charges easier and the time may be different. In short, the purpose by which the Electrical Engineer apparently means the class of the business or premises itself determines the diversity of circumstances - even electrical circumstances- w ich justify a differentiation between the rates. It is not only electrical circumstances in the narrow sense of that term which justify a differentiation. As was said in the case of Attorney-General Vs. Long Eaton Urban District Council, 1914, 2 Chancery p. 251 (where incidentally a separate lower rate for lights for factories as against private consumers was accepted without demur by all concerned as justifiable differentiation), "any circumstances which render it less costly or otherwise more profitable to supply A. than B. constitute a legitimate reason for ~~xx~~ making a /lower charge to A.for the same supply. And if the Court, once came to the conclusion that some such circumstances existed then proof would not be required that the diminution in the charge was precisely equivalent to the diminution in the cost of the supply". Similar circumstances need not necessarily be electrical circumstances, but they must be circumstances which have a bearing ing upon the supply and must not be such ~~x~~ such as---

as are totally unconnected with the supply, as for example, the sex or the religion of the consumer which are the instances given by the Electrical Engineer. The description of the nature of the establishment using the supply, as for example factories, is after all a convenient mode of bringing compendiously under one heading various circumstances having a bearing on the supply and which are referable to such description, and it should always be possible to define them. If it is proved that any other establishment wants corresponding supply under identical circumstances, it may be difficult to make out a case for differentiation only on th e ground that the nature of the establishment differs. Whether there are sufficient reasons for making a discrimination in favour of factories in this particular case, i.e. in other words, whether the circumstances as between factories and private consumers are dis-similar, is a matter for proof depending upon the reasons which may be advanced by the Company.

In this view the R.L.A.'s opinion requires no reconsideration.

Id/-P.M.L.
26/11

Remembrancer of Legal Affairs.

U.R, to P.W.D., No. 11316, dated the 26th November 1947.

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Office of the R.L.A.

Re: Dakor -Umreth Electric Licence 1940.

Indian Electricity Act, 1910.

Under section 9(2) of the Indian Electricity Act, 1910, the licensee shall not at any time assign his license or transfer his undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise without the previous consent in writing of th the Provincial Government. In this case by G.R.No.4560/33, dated the 1st November 1940, the Government of Bombay were pleased to give their consent under section 9(2) to the assignment of the Dakor-Umreth Electric License, 1940 and the transfer of the whole of the undertaking in respect of the said license by Mr. Balvantbhai Dadubhai Desai to the Dakor-Umreth Electricity Co. Ltd. The endorsement made on the original license makes it quite clear that the consent to the assignment and transfer was given subject to the performance by the Dakor-Umreth Electricity Co. Ltd. of the obligations imposed upon the licensee by or under the said license, the Indian Electricity Act, 1910, and the Rules made thereunder. Clause 14 of the Dakor-Umreth Electric license, 1940, provides as follows:-

> "The licensee shall not enter into an agreement with managing agents, if any, or make any modifications to such agreement already entered into, unless with the previous consent in writing of the Government. The Government shall also have the right to examine any agreement between the licensee and the Managing Agents, if any, and to require suitable modification granting any consent as required by section 9(2) of the Act.".

The preamble to the G.R. quoted above shows that Mr. B.D. Desai had intimated to Government that he would execute the amendment of the managing agency agreement and forward it to Government duly executed. That he has not done despite repeated reminders. It is a general principle that where parties have entered into a formal contract, that contract must be construed according to its own terms and cannot be explained or interpreted by the antecedent communings which led up to it: (Roman Ji Vs. Secretary of State, 31 Bombay Law Reporter,

256 of-----

256 at p. 259). It was open to Government to insist upon the execution of the Government to insist upon the execution of the amendment as a condition precedent to granting consent. But in fact consent was granted by the G.R. without demanding the fulfilment of the condition, and it would no longer be open to require the execution of the amendment under the later part of clause 14 on the basis of the correspondence that passed between the Government and Mr. Desai.

2. However, the first part of clause 14 would still be available to Government for enforcement. It is true that the agreement of managing agency was entered into before the assignment and transfer; but that agreement was not entered into by a licensee. Now the licensee is the Dakor-Umreth Electricity Co. Ltd. and as licensee they are bound by the first part of clause 14 which requires that the licensee shall not enter into an agreement with managing agents unless with the previous consent in writing of the Government. Presumably Government have not yet given their consent to the managing agency agreement, and the new licensee cannot make a valid agreement with managing agents except by Government's consent otherwise they would incur the penalty for the breach of the conditions of the license under section 47 of the Act; for under the terms of the endorsement quoted before, they are subject to the performance of the obligations imposed upon the licensee by or under the said license which includes the obligations contained in the first part of clause 14. It would, therefore, be feasible for Government to insist upon the present licensee, namely, the Dakor-Umreth Electricity Co. Ltd., to submit the agreement with managing agents for securing their consent and to withhold their consent when it is so submitted unless the modification they desire is incorporated in that

incorporated in that agreement.

Id/- P.M.L.
20-9-47

Remembrancer of Legal Affairs.

U.R. to P.W.D.,No. 9392, dated the 22nd September 1947

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